(S E R V E D)
(JUNE 10, 1994)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 1757(F)

ELINEL CORPORATION

v.

SEA-LAND SERVICE, INC.

ORDER ADOPTING INITIAL DECISION

This proceeding was initiated by Complaint filed by Elinel Corporation ("Elinel" or "Complainant"), alleging that Sea-Land Service, Inc. ("Sea-Land" or "Respondent") overcharged Elinel on a shipment of ceramic tiles from the Dominican Republic to Miami. The Complaint was filed with the Federal Maritime Commission ("Commission" or "FMC") after Sea-Land sued successfully to recover freight due based on rebilling at the correct tariff rate for the same shipment at issue here, in the U.S. District Court for the Southern District of Florida. In dismissing Elinel's defense of equitable estoppel based on misquotation of the rate by Sea-Land's agent, the court suggested that Elinel could file a Complaint with the Commission challenging the reasonableness of the tariff rate under the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. §§ 1701 et seq.

FMC Chief Administrative Law Judge Norman D. Kline ("ALJ") has issued an Initial Decision ("I.D.") dismissing the Complaint as

barred by the doctrines of res judicata and collateral estoppel. Complainant has requested Commission review of the I.D. We affirm the ALJ's decision as amplified below.

BACKGROUND

Elinel first sought a rate quotation from Sea-Land's agent in the Dominican Republic, Mr. Patrick Herman, for the shipment of four containers of ceramic tiles from the Dominican Republic to Miami, Florida. He quoted a rate of $542 per 20-foot container, identifying as applicable No. 76135, "ceramics, clay articles," of the U.S. Atlantic & Gulf/Hispaniola Steamship Freight Association ("Conference Tariff"). Sea-Land billed and Elinel paid freight and other charges totalling $3092 on the November 1991 shipment. However, following an audit by The Adherence Group ("TAG"), Sea-Land re-billed Elinel for additional freight and accessorial charges totalling $8,755.18, as specified by TAG. This amount was based on the difference between the amount paid by Elinel and total charges of $11,847.98, calculating the freight charges at $2030 per 20-foot container under tariff Item No. 76700, "tiles, floor or wall, ceramic," and other charges identified by TAG.

Sea-Land brought suit in the U.S. district court for the amount rebilled, and moved for summary judgment. Elinel opposed the motion, arguing as affirmative defenses that it had relied to its detriment on the rate originally quoted by Sea-Land's agent in deciding to purchase and in pricing the tile for sale in the U.S., and that it was entitled to the lowest of several conflicting rates in the Conference Tariff. The court granted Sea-Land's motion for

summary judgment in an opinion which examined the facts in light of the relevant case law regarding application of tariffs and the Supreme Court's most recent affirmation of the filed rate doctrine in Maislin Industries, U.S. v. Primary Steel, Inc., 497 U.S. 116 (1990). The district court considered which of four specific items should have been applied to the shipment.[1] The court expressly held that Item No. 76700 most specifically described the articles actually shipped and was therefore applicable as a matter of law under relevant tariff law.

Elinel requested reconsideration of the court's order, arguing that the existence at time of shipment of Item No. 76703 created a conflict which required referral of the case to the FMC under the doctrine of primary jurisdiction. Elinel asked the court to retain jurisdiction pending such referral and decision by the Commission. The court denied this request, finding that no referral to the agency was necessary for a matter involving tariff interpretation. However, the court suggested that Elinel might file a Complaint at the Commission challenging the reasonableness of the rate under Item No. 76700. Elinel thereafter filed its present Complaint.[2]

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[1] In addition to Items No. 76700 and 76135, the court examined and rejected as inapplicable rates on file at two different times under Item No. 76703 ("Tile and other articles, viz.: Block, Concrete, Building, Hollow Brick, Building, Common Roofing Clay, Concrete or Earthware Floor or Wall Ceramics.")

[2] Although this proceeding was initiated as an informal complaint filed pursuant to Subpart S of the Commission's Rules of Practice and Procedure, 46 C.F.R. §§ 502.301 - 502.305, it was transferred to the Office of Administrative Law Judges and converted to a formal proceeding under Subpart T, 46 C.F.R. §§ 502.311 - 502.321 when Respondent refused its consent to use of the shortened procedure.

THE PROCEEDING BELOW

Elinel sought as reparations repayment of the $8,755.18 (garnished from its bank account by order of the district court); costs; attorney's fees; and compensation for loss of business. Sea-Land's Answer alleged that the district court had already ruled on the matter, and that the Complaint was therefore barred by the doctrines of res judicata or collateral estoppel.

Sea-Land's Answer to the Complaint was accompanied by a supporting memorandum, and by several affidavits with underlying documentation, including the original bill of lading, TAG correction, and freight as re-billed. Respondent also attached copies of the motion for summary judgment and the opinion and order of the district court.

Elinel's reply, supported by the affidavit of Nelson Garcia, President of Elinel, and the court documents relating to garnishment of funds from Elinel's bank account on behalf of Sea-Land, emphasized the court's suggestion that a challenge to the reasonableness of the rate might be filed with the FMC. Complainant argued that Sea-Land violated section 18 of the Shipping Act, 1916, 46 U.S.C. app. § 817, by demanding additional freight and accessorial charges in the sum of $8,755.18 and alleged that the total $11,847.98 demanded and collected by Sea-Land was a greater compensation than its rates on file with the Commission. Elinel also questioned the credibility of Sea-Land's affiants (though neither had contradicted the facts as recited by Elinel). Complainant argued that it had been induced to ship its containers

on Sea-Land by the rate quoted by Sea-Land's agent, upon which it had relied to its detriment, and cited Williams Clarke Co. v. Sea-Land Service, Inc., FMC Special Docket No. 489, served January 27, 1978.

THE INITIAL DECISION

The ALJ summarized the facts and analyzed the doctrines of res judicata and collateral estoppel.[3] He cited Montana v. United States, 440 U.S. 147, 153-154 (1979), where the Supreme Court stated:

> Application of both doctrines is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions. (Case citations omitted.) To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions. (Footnote citation omitted.)

Cited in the I.D. at 7. See discussion of the doctrines at pages 6-11 of the I.D.

The ALJ addressed the matter of what constitutes the same "claim" or cause of action, and examined the basis for application of the doctrine of res judicata to this dispute. He cited the

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[3] He characterized the primary difference between the two as follows: under res judicata, or "claim preclusion," a party is precluded from raising any claim or defense in a second action that should have been raised in the first action, while under collateral estoppel, or "issue preclusion," a party is not precluded from litigating a claim or defense that was never litigated in the first action and did not have to be raised in the first action. The ALJ pointed out that "[w]hen the first court has decided all the issues that are necessary to resolve the dispute between the same parties, the distinction between res judicata and collateral estoppel becomes academic." I.D. at 9.

Restatement (Second) of Judgments for the modern approach, namely that "the causes of action are the same if they arise from the same transaction or series of connected transactions." Id. at 9. This approach was, he noted, expressly adopted in the same court in which Sea-Land's claim against Elinel was heard. Based on this analysis, the ALJ found that the same claims and defenses were involved in the case before the court and this proceeding, with the exception of Elinel's claim of unreasonableness of the applicable rate.

Reviewing the claims and defenses raised, the ALJ concluded that Complainant had a full opportunity to dispute Sea-Land's claim for the $8,755.18 in unpaid freight as re-billed. He noted that Elinel's affirmative defenses -- that Sea-Land was attempting to charge an inapplicable tariff rate and should be estopped from re-billing because of Elinel's detrimental reliance on the rate as quoted -- were rejected by the court. The court's analysis of the different rates which might have been applied and its finding as a matter of law that Item No. 76700 was the proper tariff item to be applied to the shipment were examined. The court's review of the applicable cases regarding tariff matters and the filed rate doctrine were also noted.

The ALJ discussed the further court proceedings on Elinel's motion to set aside the court's order and decision. He found that the issue of which tariff item should apply to the shipment had been conclusively resolved as a matter of law, including the court's determination that it need not stay the case and refer it

to the Commission under the doctrine of primary jurisdiction. He also found that the district court had expressly ruled upon three of complainant defenses, specifically rejecting two of them, i.e., that Complainant had paid for the services rendered and that Sea-Land was attempting to collect charges under an inapplicable tariff rate.

As to Elinel's third defense, that the rate sought by Respondent was unreasonable, the ALJ noted that the court found that defense procedurally defective because it had not been raised in Elinel's pleadings, and refused to hold the case in abeyance for referral of this issue to the Commission. However, the ALJ observed that the court did indicate that a separate proceeding for reparations could be brought before the agency based on the issue of unreasonableness of the rate, citing Reiter v. Cooper, ___ U.S. ___, 113 S. Ct. 1213 (1993).

The ALJ found that Elinel is precluded from relitigating the issue of which tariff item should apply to the shipment before the Commission, based upon res judicata. Alluding to the modern transactional definition of claim or cause of action, the ALJ concluded that "the matter of what tariff item should have been applied to the subject shipment has been decided and Elinel is now precluded from relitigation under any new theory or defense." I.D. at 16.

With respect to the court's suggestion that a reparation proceeding might lie, the ALJ noted that the court had relied on cases arising under the Interstate Commerce Act. Although the

Commission continues to have jurisdiction under the Shipping Act, 1916, 46 U.S.C. app. § 817, and the Intercoastal Shipping Act, 1933, 46 U.S.C. app. §§ 843-848, to determine the reasonableness of rates in the domestic offshore trades, no such authority exists with respect to the U.S. foreign commerce, which is regulated under the 1984 Act. The ALJ therefore concluded that the Commission lacks jurisdiction to entertain Elinel's claim of rate unreasonableness. The Complaint was accordingly dismissed.

POSITION OF THE PARTIES ON ELINEL'S REQUEST FOR REVIEW

In its Request for Review, Elinel recites the ALJ's reliance on the filed rate doctrine and the doctrines of res judicata and collateral estoppel, and the determination that the applicable rate is Item No. 76700. However, rather than presenting arguments with respect to these points of law, Elinel merely calculates the charges found to be owed to Sea-Land based on that rate. These are as follows:

4 20' containers @$2,030 per container	=	$8,120.00
Bunker surcharge: 86.171 @ $4.50	=	387.77
Security charge: 86.171 @ $6.00	=	517.03
Documentation	=	20.00
Total Amount Owed By Elinel		$9,044.80

Noting that Sea-Land has collected a total of $11,847.98 from it, Complainant alleges that it is entitled to reparations of $2,803.18, which the Commission, it states, is empowered to order to avoid unjust enrichment by Sea-Land.

Sea-Land urges the Commission to deny the request for review or, in the alternative, to affirm the I.D. Respondent argues that Elinel's request does not meet the requirements of the FMC's rules,

because it does not assert that a material finding of fact or necessary legal conclusion is erroneous or that prejudicial error has occurred.

Sea-Land argues that the I.D. was correct with respect to the application of the doctrine of res judicata, and should be affirmed. Sea-Land notes that the applicability of Item No. 76700 has essentially been conceded by Elinel in its request for review. Respondent further argues that the total amount of freight charges owing has previously been decided by the district court, noting that in both orders granting final summary judgment, the court's language specifically referred to the sum of $8,755.18 as the amount owing to Sea-Land. Allegedly, that judgment became final upon denial of Elinel's motion to set aside, and the time for appeal of the judgment to a U.S. court of appeals has passed, without appeal. Thus, Sea-Land argues, the FMC is without power to review the decision of the district court.

Alternatively, Respondent argues that the filed rate doctrine requires collection of the rate applied under Item No. 76700 and urges dismissal of the Complaint.

DISCUSSION

The issue of which rate under the tariff was applicable to the shipment was properly analyzed and conclusively determined by the district court. That determination was appropriately held by the

ALJ to have a preclusive effect in this proceeding. The I.D. is therefore adopted.

In seeking Commission review of the I.D., Elinel concedes the applicability of Item No. 76700 to its shipment. Thus, Complainant's arguments on review do not concern the freight rate assessed by Sea-Land in re-billing. Elinel fails to specifically identify the charges or the basis on which it believes them to be wrongly applied. However, on analysis of the record, we conclude that Elinel's present challenge to the amount of the charges ultimately collected by Respondent concerns the "accessorial" charges added to the freight and other specified charges reflected on the original bill of lading.

While this case was pending as an informal Complaint, Settlement Officer Joseph T. Farrell by letter requested clarification of certain of Elinel's claims, most particularly which statute the claim was based on and what sections were allegedly violated.[4] In this letter, the Settlement Officer noted that the total charges collected by Respondent, i.e., $11,847.98, exceeded the amount of re-billed freight plus the security and bunker surcharges reflected on the bill of lading. "Unfortunately," he stated, "no explanation of this calculation

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[4] Elinel responded to those inquiries by letter. However, as the case by that time had been transformed to a formal proceeding, Sea-Land, by letter to the ALJ, objected to consideration of Elinel's letter to the Settlement Officer. The ALJ, noting that the Settlement Officer's inquiries were authorized by the Commission's rules, determined that Elinel's responding letter had been superseded by Elinel's final reply to Sea-Land's Answer and memorandum in the proceeding. I.D. at 5, n. 2.

appears in the supporting documents" to the Complaint. He therefore theorized, in discussing possible applicable rates, that " . . . If Item 76700 applies, the amount of reparations would equal $2,803.18 ($11,847.98 - $9,044.80) unless Sea-Land can adequately explain the full $11,847.98. In that latter case, no reparations would apply." Elinel's reply and memorandum, Exhibit D at 2.

Although the ALJ noted Complainant's contention that the Settlement Officer had "correctly analyzed the overcharging by Sea-Land in this case," in his summary of the facts, he did not again refer to the Settlement Officer's analysis of the charges and claims, but specifically did not exclude it from the record. See Note 4 above. Elinel's present challenge appears to be based on the Settlement Officer's analysis. The unidentified charges of $2,803.18 Elinel seeks to recover can be traced to the TAG audit, which identified not only the error in the freight rate applied, but several categories of accessorial charges not reflected on the original bill of lading which made up the balance of the total re-billing required by TAG. These are identified on the TAG audit report as:

USHANDLING 4@	450.00 PER L SUM	$1800.00
ARRIMO172342@	3.25 PER S TON	280.06
DGRS11124.86@	.065 PER PERCT	723.12

Sea-Land's Answer to the Complaint, Exhibit B to Affidavit of Carol O'Hara attached to Exhibit E, Plaintiff's Motion for Final Summary Judgment in the district court.[5]

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[5] In addition to the corrected freight rate, the TAG audit listed charges for Security and Bunker Surcharges which were (continued...)

Thus, Elinel's request for Commission review may be viewed as an allegation that these charges constituted an attempt, separate and apart from the charges for freight, to collect an amount not properly applicable under Sea-Land's tariff, in violation of section 10(b)(1) of the 1984 Act, 46 U.S.C. app. § 1709(b)(1).[6] Whether the Commission may now consider this request depends on whether the issue is viewed as one not previously litigated between the parties or as one necessarily included in the claim or cause of action which has been litigated and as to which the doctrine of res judicata applies.

As discussed above, the ALJ gave considerable emphasis to a discussion of the differences between the doctrines of res judicata and collateral estoppel, but determined ultimately that the distinction between the two was not significant for purposes of this case. His discussion, moreover, indicated only that the issue of the applicable freight rate had been conclusively determined by the district court. Nevertheless, his discussion of the two doctrines covers the points essential for consideration here.

As noted by the ALJ, the general rule of claim preclusion [res judicata] is that "a valid and final judgment on a claim precludes

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[5](...continued)
identical to the amounts for those items included on the original bill of lading.

[6] Although the ALJ treated the case as an allegation of violation of the statute, the proceeding focused, as it had in the district court, on the question of the applicable freight rate. The amount of the accessorial charges does not appear to have been separately stated or addressed as an issue in any of the pleadings or motion papers in the district court or in the proceeding before the ALJ.

a second action on that claim or any part of it." Wright, The Law of Federal Courts, (4th ed., West Publishing Co.), sec. 100A at 680, 682. Thus, the question of whether Complainant's present formulation of its claim to reparations may be considered turns on the question of whether it was part of the same claim heard in the district court.

The ALJ discussed the authorities relating to what constitutes a claim or cause of action, including the modern view that the causes of action are the same if they arise from the same transaction or series of connected transactions.[7] He stated, more importantly, that

> . . . if the same claim or series of connected transactions are involved in the instant complaint as those that were involved before the district court in Miami in Sea-Land's original suit there, Elinel would be precluded from raising new defenses before the Commission, which it could have raised before the Court. See Brown v. Felsen, [442 U.S. 127, 131 (1979)] ("res judicata prevents litigation of all grounds for, or defenses to, recovery that were previously available to

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[7] Restatement (Second) Judgments, sec. 24, quoted in the I.D. at 10, note 3, states:

> Dimension of "Claim" for Purposes of Merger or Bar-General Rule Concerning "Splitting" (1) When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger or bar . . . the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the actions arose. (2) What factual grouping constitutes a "transaction," and what groupings constitute a "series," are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.

> the parties regardless of whether they were asserted or determined in the prior proceeding.") [additional citations omitted.]

I.D. at 10. This discussion provides the basis for disposition of Elinel's request for review.

Sea-Land's claim in the district court was a claim for payment of these very charges. The complaint filed by Sea-Land stated only that the shipment had been carried and charges of $8,755.18 assessed pursuant to a tariff on file with the Interstate Commerce Commission or the FMC had been demanded and remained unpaid, for which judgment was sought. See Sea-Land's answer, Exhibit C, district court complaint. However, the issues were clarified following Sea-Land's motion for final summary judgment. Although the motion also was cast in general terms of unpaid freight charges, the affidavit supporting the motion was based on and referred to the TAG audit. See id., Exhibit E, motion for final summary judgment and attached affidavit of Carol O'Hara. The TAG audit report, on which these charges were listed, was attached to the affidavit of Carol O'Hara filed in support of Sea-Land's motion for final summary judgment. Elinel had every opportunity to, and did, contest the Complaint and that motion.

Sea-Land's claim in the district court asserted a single cause of action: payment of all charges due under its tariff for a single shipment of four containers from the Dominican Republic to Miami, Florida. Any defenses Elinel had to that cause of action should have been raised in the court action. This includes the question of whether the additional accessorial charges identified

by the TAG audit were authorized under the Conference Tariff. As a defense, that issue -- like the issue of the applicable freight rate -- would have been within the court's competence to interpret the tariff. In fact, the court did refer to these charges in the ordering language of its decision granting final summary judgment:

> . . . it is hereby ORDERED AND ADJUDGED that Sea-Land's motion for final summary judgment is GRANTED. Sea-Land is entitled to summary judgment in the amount of $8,755.18, representing unpaid freight and accessorial charges.

Order Granting Plaintiff's Motion For Final Summary Judgment, at 9, Exhibit F to Sea-Land's memorandum. Although Elinel subsequently sought to have that order set aside on reconsideration, it again did not raise the issue of these accessorial charges in that motion. Its motion reiterated its defenses to the rate found applicable by the court, and requested referral of that issue to the FMC under the doctrine of primary jurisdiction.

Elinel filed its Complaint here at the suggestion of the district court that it might seek a determination of the reasonableness, or lawfulness, of the charges determined in that action to be applicable. The district court made no suggestion that Elinel might seek to litigate the matter of what charges applied to the shipment, since the court had already ruled on all claims and defenses related to that question which had been raised. In the absence of an appeal, that judgment has become final.

> A final, valid determination on the merits is conclusive on the parties and those in privity with them, as to matters that were litigated or should have been litigated, in another action or proceeding involving the same cause of action. Thus a judgment for either plaintiff A or defendant B on A's claim, rendered after

> a trial on the merits of the claim, is a final judicial settlement thereof, regardless of whether A has put forward all the grounds of recovery; available to him in connection with his claim and of whether B has interposed all defenses open to him, (footnote omitted) and even though the parties may have lacked knowledge of their complete legal rights at the time. (Footnote omitted).[Emphasis supplied.]

1B Moore's Federal Practice, ¶ 0.405[3] quoted in the I.D. at 8.

The ALJ concluded that Elinel's Complaint is barred by the doctrine of res judicata. His conclusion and reasoning is supported by the record. The same analysis applies to Complainant's latest formulation of its defense to Sea-Land's claim. The Complaint before the Commission is based on the claim as a whole, and is barred by the doctrine of res judicata.

THEREFORE, IT IS ORDERED, That the Initial Decision of Chief Administrative Law Judge Norman D. Kline in Docket No. 1757(F) is adopted;

IT IS FURTHER ORDERED, That the Complaint of Elinel Corporation, Inc. is dismissed; and

IT IS FURTHER ORDERED, That this proceeding is discontinued.

By the Commission.

Joseph C. Polking
Secretary